

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

JORDASH TANKSLEY,

Petitioner,

V.

INTERIM WARDEN J. KEVIN PERRY,

Respondent.

CV 123-029

ORDER

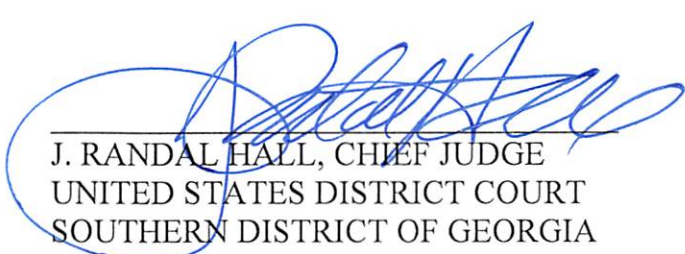
After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation ("R&R"), to which objections have been filed. (Doc. nos. 25, 26.) Accordingly, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **GRANTS IN PART** Respondent's motion to dismiss, (doc. no. 18), **DISMISSES** Petitioner's Grounds Two and Three for failure to exhaust, and **ORDERS** Petitioner, within fourteen days of this Order, to either: (1) dismiss the petition in its entirety so that he may present to the state habeas court his unexhausted claims in Grounds Two and Three; or (2) notify the Court of his preference to proceed in this Court with respect to only his exhausted claim in Ground One.

Petitioner cannot choose both, as simultaneously pursuing habeas relief in both state and federal court would offend the principles of comity that form the basis for the exhaustion requirement. Horowitz v. Wainwright, 709 F.2d 1403, 1404 (11th Cir. 1983). Accordingly,

the election Petitioner previously made to proceed in both courts simultaneously is invalid.
(Doc. no. 23.)

If Petitioner fails to respond or make a singular election as to his decision to proceed, the Court will assume he wishes to dismiss this petition so that he may present to the state habeas court his unexhausted claims. Petitioner should note that, while a subsequent § 2254 petition will not be barred purely by virtue of the dismissal of this federal action, any future petition for a writ of habeas corpus that he files will be subject to all statutory provisions applicable to such actions, including those enacted under the Antiterrorism and Effective Death Penalty Act of 1996. See 28 U.S.C. §§ 2244 & 2254.

SO ORDERED this 25th day of January, 2024, at Augusta, Georgia.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA